

Bell Atlantic
1300 I Street NW, Suite 400W
Washington, DC 20005

Kenneth Rust
Director, Federal Regulatory Affairs

December 15, 1997



Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

EX PARTE OR LATE FILED

RECEIVED
DEC 15 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ex Parte

Re. CC Docket No. 96-45, Universal Service

I am writing to express Bell Atlantic's concern regarding pending reconsideration requests seeking universal service fund reimbursement for private municipal or state networks that serve schools and libraries.¹ These requests are inconsistent with the clear language of the 1996 Act and with public policy and should be rejected.

Under the reconsideration proposals, state or municipal governments would receive universal service fund support when they construct their own state-wide or municipal-wide telecommunications networks to serve government agencies, schools and libraries. Without competitive bidding or a true "pre-discount" rate established in the regular course of serving the public, they would obtain reimbursement from the universal service fund for the amount that they claim the schools and libraries "pay" to use a portion of this network. At the same time, because they are not carriers or other telecommunications providers, the states claim that they would have no obligation to contribute revenues from their networks into the fund from which they seek substantial reimbursement.

For example, according to the NASTD, the state telecommunications networks would be constructed from "a myriad of telecommunications services and hardware components" which the state would "bundle ... into multifaceted packages available to their eligible agency participants."² In other words, they would likely procure dark fiber facilities, switches, and other hardware and software to build a network to bypass the networks of telecommunications carriers, both incumbents and new entrants. The facilities of this network would be provided, on a monopoly basis, only to state and municipal agencies, schools, libraries, and some colleges.

¹ Reconsideration requests in this issue were filed by several parties, including the Iowa Telecommunications and Technology Commission and the National Association of State Telecommunications Directors ("NASTD"). Bell Atlantic has previously opposed these petitions in a formal opposition filed by the United States Telephone Association ("USTA") and in an October 7, 1997 ex parte meeting, memorialized in a letter filed the following day.

² NASTD ex parte at 1, filed Sept. 26, 1997 ("NASTD ex parte").

Providing universal service fund assistance to these private networks would violate the Telecommunications Act. Section 254(h)(1)(B) limits universal service fund support to telecommunications carriers.³ Although the Commission has found that non-carriers may receive some support from the schools and libraries fund, that support is limited to non-telecommunications advanced services, such as internal connections and Internet access, under Section 254(h)(2) of the Act.⁴ By contrast, the Commission appropriately determined that only telecommunications carriers may be reimbursed for providing schools and libraries with basic telecommunications services, as required under Section 254(e).⁵

State and municipal governments operating private networks cannot qualify as telecommunications carriers, as NASTD readily admits.⁶ Under §153(44), telecommunications carriers are defined as entities offering telecommunications services, which in turn are defined in § 153(46) as the offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public. The services offered over these private networks, however, are not available to the public; they are provided only to designated institutions -- state and municipal agencies, schools, libraries and some colleges. Therefore, the services offered over these networks fail to fit within the statutory definition of telecommunications services, and the state and municipal governments operating these networks fail to fit within the definition of telecommunications carriers. The proposal must be rejected as inconsistent with the requirement that only such carriers may receive reimbursement from the universal service fund for providing telecommunications services to schools and libraries

The Commission should also deny the requests as a matter of sound public policy. Its education support program is firmly grounded on competition -- both to ensure the greatest value from universal service funding and to ensure that the fund is no larger than is necessary to accomplish its goals. For this reason, schools must seek competitive bids for their services. A carrier must bid a rate that is no higher than the "lowest corresponding price" at which the carrier has provided a comparable service to non-residential customers who are similarly situated to the school or library.⁷ The petitioners' request would eliminate these controls. The state or municipality would be a monopoly provider of services to the eligible institutions, thus eliminating competitive bidding. There would effectively be no lowest corresponding price, because the state or municipality would not provide service over its network on a arms-length

³ USTA at 6.

⁴ ***Federal Joint Board on Universal Service, Report and Order***, CC Docket No. 96-45, FCC 97-157, ¶¶ 589-92 (rel. May 8, 1997). *See also* 47 C.F.R. § 54.517(b) (non-telecommunications carriers are eligible for support only for Internet access and internal connections).

⁵ *Id.*


⁶ NASTD ex parte at 2.

⁷ *See* 47 C.F.R. §§ 54.500(a)(5), 54.511(b).

basis to the public. It could set any price it wants for services provided to the favored institutions and claim that this is the lowest corresponding price, with no marketplace control and no ability to audit. The "payments" would simply be budget entries going from one state or municipal agency or institution to another. States would have an incentive to "charge" its agencies high rates to justify assessing similarly high rates on the schools and libraries, in order to increase universal service fund reimbursements. Those reimbursements could, therefore, cover more than the cost of serving the schools and libraries and help defray large portions of the cost of the entire network. As a result, the states could use universal service funds indirectly to support services provided to non-education state agencies. No provision in either the Act or the Commission's Rules authorizes such a result.

Without competitive controls on prices, the amounts claimed for reimbursement are likely to be far higher than they would be under the competitive bidding proposal that the Commission adopted in its May 8, 1997 Report and Order. Reimbursement amounts could be so substantial that the existing fund cap could quickly be reached, leaving many schools and libraries obtaining service from telecommunications carriers without adequate support. At the same time, the state or municipalities operating such networks, because they are not carriers or "other telecommunications providers," would not contribute a penny to support universal service.

Bell Atlantic urges the Commission to deny the reconsideration requests and maintain existing provisions limiting support for telecommunications services provided to schools and libraries to telecommunications carriers, as Congress decreed.

A handwritten signature in black ink, appearing to read "Tom. Power", with a stylized, cursive script.

cc: Thomas Power
Kyle Dixon
Jim Casserly
Kevin Martin
Paul Gallant
A.R. Metzger
K. Moran
T. Peterson